

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Consolidated Matters of:

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012090744

v.

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT,

PARENT ON BEHALF OF STUDENT,

OAH CASE NO. 2012070653

v.

VICTOR VALLEY UNION HIGH SCHOOL
DISTRICT.

ORDER ON STUDENT’S OBJECTION
TO CONSOLIDATION

On August 22, 2012, Student filed a due process hearing request designated OAH case number 2012070653 (First Case). The First Case alleged 43 or more alleged violations of Student’s right to a FAPE beginning October of 2010 through the time of filing. The date the matter was considered filed had been delayed and reset due to problems with Student serving documents on the District.

On September 24, 2012, approximately one month later, Student filed a separate due process hearing request designated OAH case number 2012090744 (Second Case). The second case alleged 39 or more alleged violations of Student’s right to a FAPE beginning October of 2010 through the date of filing. During 2012, OAH has already conducted a hearing and issued a decision involving this same Student and District that involved allegations covering the same time period, and which contained 55 issues with numerous subparts.

On October 3, 2012, the parties requested continuances in both the First Case and Second Case, but to different dates. OAH mistakenly believed both cases sought the same dates and issued an order granting the continuances and consolidating the First Case and the Second Case.

On October 9, 2012, Student filed an objection to consolidation on the ground that OAH had made a mistake because the parties had not requested continuances to the same dates, and on the ground that Student wanted to proceed to separate hearings. Student’s

objection did not address why the same witnesses would not be required to address the numerous FAPE violation allegations in the First Case and Second Case, all of which allegedly occurred while Student was enrolled in District during the same time period. OAH cannot determine whether District had notice of Student's objection because a proof of service was not filed with it. Nonetheless, District has not filed an objection to OAH's consolidation order, nor any response to Student's objection.

OAH will generally consolidate matters that involve: a common question of law and/or fact; the same parties; and when consolidation of the matters furthers the interests of judicial economy by saving time or preventing inconsistent rulings. (See Gov. Code, § 11507.3, subd. (a) [administrative proceedings may be consolidated if they involve a common question of law or fact]; Code of Civ. Proc., § 1048, subd. (a) [same applies to civil cases].) When proceedings involve a common question of law or fact, OAH may consolidate the cases on its own motion. (Gov. Code, § 11507.3, subd. (a).)

Here, Student and District requested continuances in both the First Case and Second Case, and as Student correctly points out, the continuance requests were to different dates. Although OAH incorrectly noted that the continuance requests were to the same dates, consolidation of the First Case and Second Case is nonetheless appropriate.

Both the First Case and Second Case involve the same time period and allegations that Student was denied a FAPE due to multiple alleged substantive and procedural failings by District. The witnesses required for both cases will undoubtedly include Student's teachers, related services providers and District administrators. Given the large number of allegations, there is a likelihood of inconsistent rulings. Further, Student's prior hearing during this calendar year required an extraordinary number of hearing days given the unusually large number of allegations and the fact that Student's parent is proceeding without an attorney. In light of the above, separate hearings for the same time period with the same unusually large number of allegations, would likely result in an undue consumption of resources, both from the parties and OAH. Thus, consolidation is appropriate.

Accordingly, Student's objection to consolidation lacks merit and is overruled. The matters shall proceed as a consolidated hearing according to the schedule set forth in the October 4, 2012 Order.

IT IS SO ORDERED.

Dated: October 15, 2012

/s/

RICHARD T. BREEN
Presiding Administrative Law Judge
Office of Administrative Hearings